

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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JACQUELINE MEKHAIL,

Case No. 23-cv-00440 (KMM/TNL)

*individually, and on behalf of  
those similarly situated,*

Plaintiff,

v.

**DEFENDANT’S ANSWER TO  
PLAINTIFF’S AMENDED CLASS  
ACTION COMPLAINT**

NORTH MEMORIAL HEALTH CARE,

*d/b/a North Memorial Health,*

Jury Trial Demanded

Defendant.

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Defendant North Memorial Health Care (“Defendant”) makes the following Answer to the Amended Class Action Complaint (“Complaint”) of Plaintiff Jacqueline Mekhail, individually, and on behalf of those similarly situated (“Plaintiff”). Defendant denies each and every allegation contained in the Complaint unless hereafter admitted, qualified, or otherwise answered. Defendant includes Plaintiff’s headings for reference only, and to the extent that any heading contains an allegation, Defendant denies all such allegations. To the extent that an allegation or claim has been dismissed by the Court’s March 28, 2024, Order (Doc. No. 54), Defendant does not respond to such allegation or claim.

**INTRODUCTION**

1. With respect to Plaintiff’s characterization of the Complaint and this Action in Paragraph 1, Defendant states that the Complaint speaks for itself. Defendant denies any remaining allegations in this Paragraph.

2. With respect to Paragraph 2, Defendant admits only that it provides a website. As to the remaining allegations, Defendant states that the referenced document speaks for itself and denies all allegations inconsistent with the referenced document.

3. Defendant denies Paragraph 3.

4. With respect to Paragraph 4, Defendant admits only that it provides a website. As to the remaining allegations, Defendant states that the referenced documents speak for themselves and denies all allegations inconsistent with the referenced documents. Defendant denies any remaining allegations in this Paragraph.

5. With respect to Paragraph 5, Defendant states that it lacks sufficient knowledge or information to admit or deny any allegation regarding Plaintiff's awareness or how Pixel is "routinely used." With respect to the documents referenced in Paragraph 5, Defendant states that the referenced documents speak for themselves and denies all allegations inconsistent with the referenced documents. Defendant denies any remaining allegations in this Paragraph.

6. With respect to Paragraph 6, Defendant admits only that Plaintiff was a patient of North Memorial. With respect to the documents referenced in Paragraph 6, Defendant states that the referenced documents speak for themselves and denies all allegations inconsistent with the referenced documents. Defendant denies any remaining allegations in this Paragraph.

7. With respect to Paragraph 7, Defendant states that the referenced documents speak for themselves and denies all allegations inconsistent with the referenced documents. Defendant denies any remaining allegations in this Paragraph.

8. Defendant denies the allegations in Paragraph 8.
9. Defendant denies the allegations in Paragraph 9.
10. Defendant denies the allegations in Paragraph 10.
11. Defendant denies the allegations in Paragraph 11.
12. Defendant denies the allegations in Paragraph 12.
13. Defendant denies the allegations in Paragraph 13.
14. With respect to Paragraph 14, the Complaint speaks for itself. Defendant denies any remaining allegations in this Paragraph.

#### **JURISDICTION AND VENUE**

15. Paragraph 15 contains legal assertions to which no response is required. To the extent a response is required, Defendant denies the allegations in this Paragraph.

16. With respect to Paragraph 16, Defendant admits only that it is a Minnesota corporation; that its principal office is located at 3300 North Oakdale Avenue, Robbinsdale, MN 55422; and that Plaintiff received health care from Defendant in the State of Minnesota. Defendant lacks sufficient knowledge or information to admit or deny any other allegations regarding Plaintiff. Further, Paragraph 16 contains legal assertions to which no response is required. Defendant denies any remaining allegations in this Paragraph.

17. With respect to Paragraph 17, Defendant admits only that its headquarters are located in Minnesota. Paragraph 16 contains legal assertions to which no response is required. Defendant denies any remaining allegations in this Paragraph.

## **PARTIES**

18. Defendant lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 18.

19. With respect to Paragraph 19, Defendant admits only that Plaintiff is a former patient of Defendant who received services in or around October 2021. Defendant lacks sufficient knowledge or information to admit or deny any other allegations relating to Plaintiff's actions in Paragraph 19. With respect to the documents referenced in Paragraph 19, Defendant states that the referenced documents speak for themselves and denies all allegations inconsistent with the referenced documents. Defendant denies any remaining allegations in this Paragraph.

20. With respect to Paragraph 20, Defendant states that the referenced documents speak for themselves and denies all allegations inconsistent with the referenced documents. Defendant denies any remaining allegations in this Paragraph.

21. Defendant lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 21.

22. Defendant denies the allegations in Paragraph 22.

23. Defendant lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 23.

24. Defendant admits the allegations in Paragraph 24.

25. Defendant denies the allegations in Paragraph 25.

## **FACTUAL BACKGROUND**

### **A. Defendant Collected, Maintained and Stored Sensitive Information**

26. Defendant admits Paragraph 26.

27. With respect to Paragraph 27, Defendant admits only that it maintains certain information in connection with providing patient care but denies Plaintiff's characterization of that information. Defendant further states that the documents referenced in Paragraph 27 speak for themselves and denies all allegations inconsistent with the referenced documents. Defendant denies any remaining allegations in this Paragraph.

28. With respect to Paragraph 28, Defendant states that the documents referenced speak for themselves and denies all allegations inconsistent with the referenced documents. Defendant denies any remaining allegations in this Paragraph.

29. With respect to Paragraph 29, Defendant states that the document referenced speaks for itself and denies all allegations inconsistent with the referenced document.

30. With respect to Paragraph 30, Defendant states that the document speaks for itself and denies all allegations inconsistent with the referenced documents. Defendant further states that Paragraph 30 contains legal assertions to which no response is required. To the extent a response is required, Defendant denies the allegations in this Paragraph. Defendant denies any remaining allegations in this Paragraph.

31. Paragraph 31 contains legal assertions to which no response is required. To the extent a response is required, Defendant denies the allegations in this Paragraph. Defendant denies any remaining allegations in this Paragraph.

32. Paragraph 32 contains legal assertions to which no response is required. To the extent a response is required, Defendant denies the allegations in this Paragraph. Defendant denies any remaining allegations in this Paragraph.

33. Paragraph 33 contains legal assertions to which no response is required. To the extent a response is required, Defendant denies the allegations in this Paragraph. Defendant denies any remaining allegations in this Paragraph.

**B. Defendant Exposed Its Patients' Sensitive Information**

34. With respect to Paragraph 34, Defendant states that the documents referenced speak for themselves and denies all allegations inconsistent with the referenced documents. Defendant denies any remaining allegations in this Paragraph.

35. Paragraph 35 contains a hypothetical to which no response is required as there are no factual allegations to admit or deny. To the extent a response is required, Defendant lacks sufficient knowledge or information to admit or deny the allegations. With respect to the documents referenced in Paragraph 35, Defendant states that the documents referenced speak for themselves and denies all allegations inconsistent with the referenced documents. Defendant denies any remaining allegations in this Paragraph.

36. Defendant lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 36.

37. Paragraph 37 contains legal assertions to which no response is required. To the extent a response is required, Defendant denies the allegations in this Paragraph. Defendant denies any remaining allegations in this Paragraph.

38. Paragraph 38 contains legal assertions to which no response is required. To the extent a response is required, Defendant denies the allegations in this Paragraph. Defendant denies any remaining allegations in this Paragraph.

39. Defendant denies the allegations in Paragraph 39.

40. Paragraph 40 contains legal assertions to which no response is required. To the extent a response is required, Defendant denies the allegations in this Paragraph. Defendant denies any remaining allegations in this Paragraph.

**C. The Meta Pixel**

41. Defendant lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 41.

42. Defendant lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 42.

43. Defendant lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 43.

44. Defendant lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 44.

45. With respect to Paragraph 45, Defendant states that the documents referenced speak for themselves and denies all allegations inconsistent with the referenced documents. Defendant lacks sufficient knowledge or information to admit or deny any remaining allegations in this Paragraph.

46. Paragraph 46 contains a hypothetical to which no response is required as there are no factual allegations to admit or deny. To the extent a response is required,

Defendant lacks sufficient knowledge or information to admit or deny the allegations. With respect to the documents referenced in Paragraph 46, Defendant states that the documents referenced speak for themselves and denies all allegations inconsistent with the referenced documents. Defendant denies any remaining allegations in this Paragraph.

47. With respect to Paragraph 47, Defendant states that the documents referenced speak for themselves and denies all allegations inconsistent with the referenced documents. Defendant denies any remaining allegations in this Paragraph.

48. With respect to Paragraph 48, Defendant states that the documents referenced speak for themselves and denies all allegations inconsistent with the referenced documents. Defendant lacks sufficient knowledge or information to admit or deny any remaining allegations in this Paragraph.

49. With respect to Paragraph 49, Defendant states that the documents referenced speak for themselves and denies all allegations inconsistent with the referenced documents. Defendant lacks sufficient knowledge or information to admit or deny any remaining allegations in this Paragraph.

50. Paragraph 50 contains a hypothetical to which no response is required as there are no factual allegations to admit or deny. To the extent a response is required, Defendant lacks sufficient knowledge or information to admit or deny the allegations. With respect to the documents referenced in Paragraph 50, Defendant states that the documents referenced speak for themselves and denies all allegations inconsistent with the referenced documents. Defendant lacks sufficient knowledge or information to admit or deny any remaining allegations in this Paragraph.

51. With respect to Paragraph 51, Defendant states that the documents referenced speak for themselves and denies all allegations inconsistent with the referenced documents. Defendant lacks sufficient knowledge or information to admit or deny any remaining allegations in this Paragraph.

52. With respect to Paragraph 52, Defendant states that the documents referenced speak for themselves and denies all allegations inconsistent with the referenced documents. Defendant denies any remaining allegations in this Paragraph.

53. Paragraph 53 contains a hypothetical to which no response is required as there are no factual allegations to admit or deny. To the extent a response is required, Defendant lacks sufficient knowledge or information to admit or deny the allegations. With respect to the documents referenced in Paragraph 53, Defendant states that the documents referenced speak for themselves and denies all allegations inconsistent with the referenced documents. Defendant denies any remaining allegations in this Paragraph.

54. Paragraph 54 contains a hypothetical to which no response is required as there are no factual allegations to admit or deny. To the extent a response is required, Defendant lacks sufficient knowledge or information to admit or deny the allegations. With respect to the documents referenced in Paragraph 54, Defendant states that the documents referenced speak for themselves and denies all allegations inconsistent with the referenced documents. Defendant denies any remaining allegations in this Paragraph.

55. Defendant lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 55.

**D. Defendant Employed Pixel on its Websites to Allow Meta to Intercept Communications and Class Members' Sensitive Information.**

56. Defendant denies Paragraph 56.

57. Paragraph 57 contains a hypothetical to which no response is required as there are no factual allegations to admit or deny. To the extent a response is required, Defendant lacks sufficient knowledge or information to admit or deny the allegations.

- a. Subparagraph 57.a contains hypotheticals to which no response is required as there are no factual allegations to admit or deny. To the extent a response is required, Defendant lacks sufficient knowledge or information to admit or deny the allegations. Defendant lacks sufficient knowledge or information to admit or deny any remaining allegations in this Subparagraph.
- b. Subparagraph 57.b contains hypotheticals to which no response is required as there are no factual allegations to admit or deny. To the extent a response is required, Defendant lacks sufficient knowledge or information to admit or deny the allegations. With respect to the documents referenced in Subparagraph 57.b, Defendant states that the documents referenced speak for themselves and denies all allegations inconsistent with the referenced documents. Defendant lacks sufficient knowledge or information to admit or deny any remaining allegations in this Subparagraph.

- c. Subparagraph 57.c contains hypotheticals to which no response is required as there are no factual allegations to admit or deny. To the extent a response is required, Defendant lacks sufficient knowledge or information to admit or deny the allegations. Defendant lacks sufficient knowledge or information to admit or deny any remaining allegations in this Subparagraph.

58. Paragraph 58 contains hypotheticals to which no response is required as there are no factual allegations to admit or deny. To the extent a response is required, Defendant lacks sufficient knowledge or information to admit or deny the allegations. To the extent that Paragraph 58 references documents, Defendant states that the documents referenced speak for themselves and denies all allegations inconsistent with the referenced documents. Defendant lacks sufficient knowledge or information to admit or deny any remaining allegations in this Paragraph.

59. With respect to Paragraph 59, Defendant states that the specifically referenced document (Defendant's website) speaks for itself and denies all allegations inconsistent with the referenced documents. Defendant lacks sufficient knowledge or information to admit or deny any remaining allegations in Paragraph 59, including those related to any other website.

60. Paragraph 60 contains hypotheticals to which no response is required as there are no factual allegations to admit or deny. To the extent a response is required, Defendant lacks sufficient knowledge or information to admit or deny the allegations. With respect to the documents referenced in Paragraph 60, Defendant states that the documents referenced

speak for themselves and denies all allegations inconsistent with the referenced documents. Defendant denies any remaining allegations in this Paragraph.

61. With respect to Paragraph 61, Defendant states that the documents referenced speak for themselves and denies all allegations inconsistent with the referenced documents. Defendant denies any remaining allegations in this Paragraph.

62. Defendant denies Paragraph 62.

63. With respect to Paragraph 63, Defendant states that the documents referenced speak for themselves and denies all allegations inconsistent with the referenced documents. Defendant lacks sufficient knowledge or information to admit or deny any remaining allegations in this Paragraph.

64. Defendant denies Paragraph 64.

65. Paragraph 65 contains a hypothetical to which no response is required as there are no factual allegations to admit or deny. To the extent a response is required, Defendant lacks sufficient knowledge or information to admit or deny the allegations. With respect to the documents referenced in Paragraph 65, Defendant states that the documents referenced speak for themselves and denies all allegations inconsistent with the referenced documents. To the extent that Figure 1, including its caption, following this Paragraph is construed as an allegation, Defendant states that the image references a document which speaks for itself. Defendant denies all allegations inconsistent with the referenced document. Defendant denies any remaining allegations in this Paragraph.

66. Paragraph 66 contains a hypothetical to which no response is required as there are no factual allegations to admit or deny. To the extent a response is required,

Defendant lacks sufficient knowledge or information to admit or deny the allegations. With respect to the documents referenced in Paragraph 66, Defendant states that the documents referenced speak for themselves and denies all allegations inconsistent with the referenced documents. To the extent that Figure 2, including its caption, following this Paragraph is construed as an allegation, Defendant states that the image references a document which speaks for itself. Defendant denies all allegations inconsistent with the referenced document. Defendant denies any remaining allegations in this Paragraph.

67. Paragraph 67 contains a hypothetical to which no response is required as there are no factual allegations to admit or deny. To the extent a response is required, Defendant lacks sufficient knowledge or information to admit or deny the allegations. With respect to the documents referenced in Paragraph 67, Defendant states that the documents referenced speak for themselves and denies all allegations inconsistent with the referenced documents. To the extent that Figure 3, including its caption, following this Paragraph is construed as an allegation, Defendant states that the image references a document which speaks for itself. Defendant denies all allegations inconsistent with the referenced document. Defendant denies any remaining allegations in this Paragraph.

68. Paragraph 68 contains a hypothetical to which no response is required as there are no factual allegations to admit or deny. To the extent a response is required, Defendant lacks sufficient knowledge or information to admit or deny the allegations. With respect to the documents referenced in Paragraph 68, Defendant states that the documents referenced speak for themselves and denies all allegations inconsistent with the referenced documents. To the extent that Figures 4 and 5, including their captions, following this

Paragraph are construed as allegations, Defendant states that the images reference documents which speak for themselves. Defendant denies all allegations inconsistent with the referenced documents. Defendant denies any remaining allegations in this Paragraph.

69. Paragraph 69 contains a hypothetical to which no response is required as there are no factual allegations to admit or deny. To the extent a response is required, Defendant lacks sufficient knowledge or information to admit or deny the allegations. With respect to the documents referenced in Paragraph 69, Defendant states that the referenced documents speak for themselves and denies all allegations inconsistent with the referenced documents. To the extent that Figure 5 referenced by this Paragraph is construed as an allegation, Defendant states that the image references a document which speaks for itself. Defendant denies all allegations inconsistent with the referenced document. Defendant denies any remaining allegations in this Paragraph.

70. Paragraph 70 contains a hypothetical to which no response is required as there are no factual allegations to admit or deny. To the extent a response is required, Defendant lacks sufficient knowledge or information to admit or deny the allegations. With respect to the documents referenced in Paragraph 70, Defendant states that the referenced documents speak for themselves and denies all allegations inconsistent with the referenced documents. To the extent that the images after this Paragraph are construed as allegations, Defendant states that the images reference documents which speak for themselves. Defendant denies all allegations inconsistent with the referenced documents. Defendant denies any remaining allegations in this Paragraph.

71. With respect to Paragraph 71, Defendant states that the referenced documents speak for themselves and denies all allegations inconsistent with the referenced documents. To the extent that images referenced by this Paragraph are construed as allegations, Defendant states that the images reference documents which speak for themselves. Defendant denies all allegations inconsistent with the referenced documents. Defendant denies any remaining allegations in this Paragraph.

72. Defendant denies Paragraph 72.

73. With respect to Paragraph 73, Defendant states that the documents referenced speak for themselves and denies all allegations inconsistent with the referenced documents. Defendant denies any remaining allegations in this Paragraph.

74. Defendant denies Paragraph 74.

**E. Exposure of Sensitive Information Creates a Substantial Risk of Harm**

75. With respect to Paragraph 75, Defendant states that the referenced documents speak for themselves and denies all allegations inconsistent with the referenced documents. Defendant denies any remaining allegations in this Paragraph.

76. With respect to Paragraph 76, Defendant states that the documents referenced speak for themselves and denies all allegations inconsistent with the referenced documents. Defendant denies any remaining allegations in this Paragraph.

77. With respect to Paragraph 77, Defendant states that the documents referenced speak for themselves and denies all allegations inconsistent with the referenced documents. Further, Paragraph 77 contains legal assertions to which no response is required. Defendant

lacks sufficient knowledge or information to admit or deny any remaining allegations in this Paragraph.

**F. Plaintiff's and the Class's Sensitive Information is Valuable.**

78. With respect to Paragraph 78, Defendant states that the document referenced speaks for itself and denies all allegations inconsistent with the referenced document.

79. With respect to Paragraph 79, Defendant states that the document referenced speaks for itself and denies all allegations inconsistent with the referenced document.

80. With respect to Paragraph 80, Defendant states that the document referenced speaks for itself and denies all allegations inconsistent with the referenced document.

81. With respect to Paragraph 81, Defendant states that the document referenced speaks for itself and denies all allegations inconsistent with the referenced document.

82. With respect to Paragraph 82, Defendant states that the document referenced speaks for itself and denies all allegations inconsistent with the referenced document.

83. With respect to Paragraph 83, Defendant states that the document referenced speaks for itself and denies all allegations inconsistent with the referenced document.

84. With respect to Paragraph 84, Defendant states that the document referenced speaks for itself and denies all allegations inconsistent with the referenced document. Further, Paragraph 84 contains legal assertions to which no response is required. Defendant denies any remaining allegations in this Paragraph.

85. With respect to Paragraph 85, Defendant states that the document referenced speaks for itself and denies all allegations inconsistent with the referenced document.

86. Defendant denies Paragraph 86.

87. With respect to Paragraph 87, Defendant states that the document referenced speaks for itself and denies all allegations inconsistent with the referenced document.

88. Paragraph 88 contains legal assertions to which no response is required. Defendant denies any remaining allegations in this Paragraph.

89. With respect to Paragraph 89, Defendant states that the referenced documents speak for themselves and denies all allegations inconsistent with the referenced documents. Defendant denies any remaining allegations in this Paragraph.

90. With respect to Paragraph 90, Defendant states that the documents referenced speak for themselves and denies all allegations inconsistent with the referenced documents.

**G. Plaintiff and the Class Had a Reasonable Expectation of Privacy in Their Interaction with Defendant's Website and Application.**

91. Paragraph 91 contains hypotheticals to which no response is required as there are no factual allegations to admit or deny. To the extent a response is required, Defendant lacks sufficient knowledge or information to admit or deny the allegations.

92. With respect to Paragraph 92, Defendant states that the documents referenced speak for themselves and denies all allegations inconsistent with the referenced documents.

93. With respect to Paragraph 93, Defendant states that the documents referenced speak for themselves and denies all allegations inconsistent with the referenced documents.

94. With respect to Paragraph 94, Defendant states that the documents referenced speak for themselves and denies all allegations inconsistent with the referenced documents.

95. With respect to Paragraph 95, Defendant states that the documents referenced speak for themselves and denies all allegations inconsistent with the referenced documents.

96. With respect to Paragraph 96, Defendant states that the document referenced speaks for itself and denies all allegations inconsistent with the referenced document.

97. Paragraph 97 contains hypotheticals to which no response is required as there are no factual allegations to admit or deny. To the extent a response is required, Defendant lacks sufficient knowledge or information to admit or deny the allegations.

#### **H. Defendant's Conduct Violated HIPAA.**

98. With respect to Paragraph 98, Defendant states that the document referenced speaks for itself and denies all allegations inconsistent with the referenced document. Further, Paragraph 98 contains legal assertions to which no response is required. Defendant denies any remaining allegations in this Paragraph.

99. With respect to Paragraph 99, Defendant states that the documents referenced speak for themselves and denies all allegations inconsistent with the referenced documents. Further, Paragraph 99 contains legal assertions to which no response is required. Defendant denies any remaining allegations in this Paragraph.

100. With respect to Paragraph 100, Defendant states that the documents referenced speak for themselves and denies all allegations inconsistent with the referenced documents. Further, Paragraph 100 contains legal conclusions to which no response is required. Defendant denies any remaining allegations in this Paragraph.

101. With respect to Paragraph 101, Defendant states that the documents referenced speak for themselves and denies all allegations inconsistent with the referenced documents. Further, Paragraph 101 contains legal conclusions to which no response is required. Defendant denies any remaining allegations in this Paragraph.

102. Paragraph 102 and its subparagraphs contains legal conclusions to which no response is required. Defendant denies any remaining allegations in this Paragraph and its subparagraphs.

103. With respect to Paragraph 103, Defendant states that the document referenced speaks for itself and denies all allegations inconsistent with the referenced document. Further, Paragraph 103 contains legal conclusions to which no response is required.

104. With respect to Paragraph 104, Defendant states that the document referenced speaks for itself and denies all allegations inconsistent with the referenced document. Further, Paragraph 104 contains legal conclusions to which no response is required.

105. With respect to Paragraph 105, Defendant states that the document referenced speaks for itself and denies all allegations inconsistent with the referenced document. Further, Paragraph 105 contains legal conclusions to which no response is required.

106. With respect to Paragraph 106, Defendant states that the document referenced speaks for itself and denies all allegations inconsistent with the referenced document. Further, Paragraph 106 contains legal conclusions to which no response is required. Defendant denies any remaining allegations in this Paragraph.

**I. Defendant's Privacy Policy Does Not Excuse its Use of Pixel.**

107. With respect to Paragraph 107, Defendant states that the documents referenced in this Paragraph speak for themselves and denies all allegations inconsistent

with the referenced documents. Further, Paragraph 107 contains legal conclusions to which no response is required. Defendant denies any remaining allegations in this Paragraph.

108. With respect to Paragraph 108, Defendant further states that the document referenced in this Paragraph speaks for itself and denies all allegations inconsistent with the referenced document. Defendant denies any remaining allegations in this Paragraph.

109. With respect to Paragraph 109, Defendant further states that the document referenced in this Paragraph speaks for itself and denies all allegations inconsistent with the referenced document. Defendant denies any remaining allegations in this Paragraph.

110. With respect to Paragraph 110, Defendant states that the documents referenced speak for themselves and denies all allegations inconsistent with the referenced documents. Defendant denies any remaining allegations in this Paragraph.

111. With respect to Paragraph 111, Defendant states that the documents referenced speak for themselves and denies all allegations inconsistent with the referenced documents. Defendant lacks sufficient knowledge or information to admit or deny any remaining allegations in this Paragraph.

112. With respect to Paragraph 112, Defendant states that the documents referenced in this Paragraph speak for themselves and denies all allegations inconsistent with the referenced documents. Defendant lacks sufficient knowledge or information to admit or deny any remaining allegations in this Paragraph.

113. With respect to Paragraph 113, Defendant states that the documents referenced in this Paragraph speak for themselves and denies all allegations inconsistent

with the referenced documents. Defendant lacks sufficient knowledge or information to admit or deny any remaining allegations in this Paragraph.

114. With respect to Paragraph 114, Defendant states that the documents referenced in this Paragraph speak for themselves and denies all allegations inconsistent with the referenced documents. Defendant denies any remaining allegations in this Paragraph.

115. With respect to Paragraph 115, Defendant admits only that Meta is an entity independent from Defendant. Defendant further states that the documents referenced in this Paragraph speak for themselves and denies all allegations inconsistent with the referenced documents. Further, Paragraph 115 contains legal assertions to which no response is required. Defendant denies any remaining allegations in this Paragraph.

116. With respect to Paragraph 116, Defendant states that the documents referenced in this Paragraph speak for themselves and denies all allegations inconsistent with the referenced documents. Further, Paragraph 116 contains legal assertions to which no response is required. Defendant denies any remaining allegations in this Paragraph.

117. With respect to Paragraph 117, Defendant states that the documents referenced in this Paragraph speak for themselves and denies all allegations inconsistent with the referenced documents. Further, Paragraph 117 contains legal assertions to which no response is required. Defendant denies any remaining allegations in this Paragraph.

118. With respect to Paragraph 118, Defendant states that the documents referenced speaks for themselves and denies all allegations inconsistent with the referenced

documents. Further, Paragraph 118 contains legal assertions to which no response is required. Defendant denies any remaining allegations in this Paragraph.

### **CLASS ALLEGATIONS**

119. Paragraph 119 contains legal assertions to which no response is required. To the extent a response is required, Defendant denies the allegations in this Paragraph.

120. Paragraph 120 contains legal assertions to which no response is required. To the extent a response is required, Defendant denies the allegations in this Paragraph.

121. Paragraph 121 contains legal assertions to which no response is required. To the extent a response is required, Defendant denies the allegations in this Paragraph.

122. Defendant denies Paragraph 122.

123. Paragraph 123 contains legal assertions to which no response is required. Defendant denies any remaining allegations in this Paragraph.

124. Paragraph 124 and its subparagraphs contains legal assertions to which no response is required. To the extent a response is required, Defendant denies the allegations in this Paragraph and its subparagraphs.

125. Paragraph 125 contains legal assertions to which no response is required. To the extent a response is required, Defendant denies the allegations in this Paragraph.

126. Paragraph 126 contains legal assertions to which no response is required. To the extent a response is required, Defendant denies the allegations in this Paragraph.

127. Paragraph 127 contains legal assertions to which no response is required. To the extent a response is required, Defendant denies the allegations in this Paragraph.

128. Paragraph 128 contains legal assertions to which no response is required. To the extent a response is required, Defendant denies the allegations in this Paragraph.

## **CLAIMS**

### **COUNT I**

#### **VIOLATIONS OF ELECTRONIC COMMUNICATIONS PRIVACY ACT ("ECPA") (18 U.S.C. § 2511(1)) (On behalf of Plaintiff and the Nationwide Class)**

129. Defendant restates its responses to the allegations in Paragraphs 1 through 128 and incorporates them herein by reference.

130. Paragraph 130 contains legal assertions to which no response is required. To the extent a response is required, Defendant denies the allegations in this Paragraph.

131. Paragraph 131 contains legal assertions to which no response is required. To the extent a response is required, Defendant denies the allegations in this Paragraph.

132. Paragraph 132 contains legal assertions to which no response is required. To the extent a response is required, Defendant denies the allegations in this Paragraph.

133. Paragraph 133 contains legal assertions to which no response is required. To the extent a response is required, Defendant denies the allegations in this Paragraph.

134. Defendant denies the allegations in Paragraph 134.

135. Paragraph 135 contains legal assertions to which no response is required. To the extent a response is required, Defendant denies the allegations in this Paragraph.

136. Paragraph 136 contains legal assertions to which no response is required. To the extent a response is required, Defendant denies the allegations in this Paragraph.

137. Paragraph 137 contains legal assertions to which no response is required. To the extent a response is required, Defendant denies the allegations in this Paragraph. Defendant denies any remaining allegations in this Paragraph.

138. Paragraph 138 contains legal assertions to which no response is required. To the extent a response is required, Defendant denies the allegations in this Paragraph.

139. Defendant denies the allegations in Paragraph 139.

140. Defendant denies the allegations in Paragraph 140.

141. Defendant denies the allegations in Paragraph 141.

142. Defendant denies the allegations in Paragraph 142.

143. Defendant denies the allegations in Paragraph 143.

144. Defendant denies the allegations in Paragraph 144 and its subparagraphs.

145. Defendant denies the allegations in Paragraph 145.

146. With respect to Paragraph 146, Defendant denies that Plaintiff and Class Members are entitled to the referenced relief.

147. Defendant denies the allegations in Paragraph 147. Further, Defendant denies that Plaintiff and Class Members are entitled to the referenced relief.

**COUNT II**  
**VIOLATION OF THE MINNESOTA WIRETAP ACT**  
**Chapter 626A.02**  
**(On behalf of Plaintiff and the Nationwide Class)**

148. Defendant restates its responses to the allegations in Paragraphs 1 through 147 and incorporates them herein by reference.

149. Paragraph 149 contains legal assertions to which no response is required. To the extent a response is required, Defendant denies the allegations in this Paragraph.

150. Paragraph 150 contains legal assertions to which no response is required. To the extent a response is required, Defendant denies the allegations in this Paragraph.

151. Paragraph 151 contains legal assertions to which no response is required. To the extent a response is required, Defendant denies the allegations in this Paragraph.

152. Defendant denies the allegations in Paragraph 152.

153. Paragraph 153 contains legal assertions to which no response is required. To the extent a response is required, Defendant denies the allegations in this Paragraph.

154. Paragraph 154 contains legal assertions to which no response is required. To the extent a response is required, Defendant denies the allegations in this Paragraph.

155. Paragraph 155 contains legal assertions to which no response is required. To the extent a response is required, Defendant denies the allegations in this Paragraph. Defendant denies any remaining allegations in this Paragraph.

156. Paragraph 156 contains legal assertions to which no response is required. To the extent a response is required, Defendant denies the allegations in this Paragraph.

157. Defendant denies the allegations in Paragraph 157.

158. Defendant denies the allegations in Paragraph 158.

159. Defendant denies the allegations in Paragraph 159.

160. Defendant denies the allegations in Paragraph 160.

161. Defendant denies the allegations in Paragraph 161.

162. Defendant denies the allegations in Paragraph 162.

163. With respect to Paragraph 163, Defendant denies that Plaintiff and Class Members are entitled to the referenced relief.

164. Defendant denies the allegations in Paragraph 164. Further, Defendant denies that Plaintiff and Class Members are entitled to the referenced relief.

165. Paragraph 165 contains legal assertions to which no response is required. To the extent a response is required, Defendant denies the allegations in this Paragraph. Further, Defendant denies that Plaintiff and Class Members are entitled to the referenced relief.

166. Defendant denies the allegations in Paragraph 166. Further, Defendant denies that Plaintiff and Class Members are entitled to the referenced relief.

**COUNT III**  
**VIOLATION OF THE MINNESOTA CONSUMER FRAUD ACT**  
**Minn. Stat. § 325F.69 *et seq***  
**(On behalf of Plaintiff and the Nationwide Class)**

167. This claim was dismissed by the Court’s March 28, 2024, Order (Doc. No. 54). Accordingly, no response is required, and Defendant will not respond to the allegations in Paragraphs 167–74.

**COUNT IV**  
**VIOLATION OF THE MINNESOTA UNIFORM DECEPTIVE TRADE**  
**PRACTICES ACT (“MUDTPA”) § 325D.43-48**  
**(On behalf of Plaintiff and the Nationwide Class)**

175. Defendant restates its responses to the allegations in Paragraphs 1 through 174 and incorporates them herein by reference.

176. Defendant denies the allegations in Paragraph 176.

177. Paragraph 177 contains legal assertions to which no response is required. To the extent a response is required, Defendant denies these allegations in this Paragraph.

178. Defendant denies the allegations in Paragraph 178.

179. Defendant denies the allegations in Paragraph 179 and its subparagraphs.

180. Defendant denies the allegations in Paragraph 180.

181. Defendant denies the allegations in Paragraph 181.

182. Defendant denies the allegations in Paragraph 182.

183. Defendant denies the allegations in Paragraph 183 and its subparagraphs.

184. Defendant denies the allegations in Paragraph 184.

185. Defendant denies the allegations in Paragraph 185.

186. Defendant denies the allegations in Paragraph 186.

187. Defendant denies the allegations in Paragraph 187.

188. Paragraph 188 contains a hypothetical to which no response is required as there are no factual allegations to admit or deny. To the extent a response is required, Defendant lacks sufficient knowledge or information to admit or deny the allegations. Defendant denies the allegations in Paragraph 188.

189. Paragraph 189 contains a hypothetical to which no response is required as there are no factual allegations to admit or deny. To the extent a response is required, Defendant lacks sufficient knowledge or information to admit or deny the allegations. To the extent a response is required, Defendant lacks sufficient knowledge or information to admit or deny the allegations. Defendant denies any remaining allegations in this Paragraph.

190. Paragraph 190 contains legal assertions to which no response is required. To the extent a response is required, Defendant denies these allegations in this Paragraph. Defendant denies that Plaintiff and Class Members are entitled to the referenced relief.

#### **COUNT V**

#### **Violation of the Minnesota Health Records Act Minn. Stat. §§ 144.291 and 144.293 (On behalf of Plaintiff and the Nationwide Class)**

191. Defendant restates its responses to the allegations in Paragraphs 1 through 190 and incorporates them herein by reference.

192. Paragraph 192 contains legal assertions to which no response is required. To the extent a response is required, Defendant denies the allegations in this Paragraph.

193. Defendant denies the allegations in Paragraph 193.

194. Defendant denies the allegations in Paragraph 194.

195. Paragraph 195 contains legal assertions to which no response is required. To the extent a response is required, Defendant denies the allegations in this Paragraph.

196. Defendant denies the allegations in Paragraph 196.

197. Defendant denies the allegations in Paragraph 197.

198. Paragraph 198 contains legal assertions to which no response is required. To the extent a response is required, Defendant denies these allegations in this Paragraph. Defendant denies any remaining allegations in this Paragraph. Defendant denies that Plaintiff and Class Members are entitled to the referenced relief.

**COUNT VI**  
**INVASION OF PRIVACY—INTRUSION UPON SECLUSION AND**  
**PUBLICATION OF PRIVATE FACTS**  
**(On behalf of Plaintiff and the Nationwide Class)**

199. This claim was dismissed by the Court’s March 28, 2024, Order (Doc. No. 54). Accordingly, no response is required, and Defendant will not respond to the allegations in Paragraphs 199–209.

**COUNT VII**  
**UNJUST ENRICHMENT**  
**(On behalf of Plaintiff and the National Class)**

210. Defendant restates its responses to the allegations in Paragraphs 1 through 209 and incorporates them herein by reference.

211. Defendant denies the allegations in Paragraph 211.

212. Defendant denies the allegations in Paragraph 212.

213. Defendant denies the allegations in Paragraph 213.

214. Defendant denies the allegations in Paragraph 214.

**PRAYER FOR RELIEF**

Defendant denies that Plaintiff is entitled to judgment in her favor or to any relief including that requested in Sections a – g of Plaintiff’s Prayer for Relief.

**DEFENSES**

Without conceding that it bears the burden of proof as to any issue or defense, Defendant asserts the following defenses:

1. The Complaint fails to state a cause of action for which relief may be granted.

2. Plaintiff's claims and the claims of the putative class members are barred, in whole or in part, because the Plaintiff and class members lack standing to assert the alleged claims.

3. Plaintiff's claims and the claims of the putative class members are barred, in whole or in part, because the Plaintiff and class members lack standing to obtain the relief sought and/or available by law for the alleged claims.

4. Plaintiff's claims and the claims of the putative class members are barred, in whole or in part, because the damages sought by Plaintiff and the putative class members are speculative, remote, and/or impossible to ascertain.

5. Plaintiff's claims and the claims of the putative class members are barred, in whole or in part, because the relief sought by Plaintiff and the putative class members is speculative, remote, and/or cannot be ordered against Defendant.

6. Plaintiff's claims and the claims of the putative class members are barred, in whole or in part, by the applicable statute(s) of limitations.

7. The alleged conduct of Defendant was not the proximate cause of the losses alleged by Plaintiff and the putative class members.

8. Plaintiff's claims and the claims of the putative class members are barred, in whole or in part, by Plaintiff's and class members' failure or failures to mitigate damages.

9. Plaintiff's claims and the claims of the putative class members are barred, in whole or in part, by the intervening or superseding acts of a third party or third parties.

10. Plaintiff's claims and the claims of the putative class members are barred, in whole or in part, because a third party or third parties are responsible for any damages Plaintiff and class members suffered.

11. Plaintiff's claims and the claims of the putative class members are barred, in whole or in part, because Plaintiff's and class members' own actions are responsible for any damages and/or harms Plaintiff and class members suffered.

12. Plaintiff's claims and the claims of the putative class members are barred, in whole or in part, because Plaintiff and class members knew or should have known of Defendant's actions at the time Plaintiff and class members used Defendant's website.

13. Plaintiff's claims and the claims of the putative class members are barred, in whole or in part, by Plaintiff's and class members' assent to certain terms and conditions.

14. Plaintiff's claims and the claims of the putative class members are barred, in whole or in part, by Plaintiff's and class members' consent to Defendant's actions.

15. Plaintiff's claims and the claims of the putative class members are barred, in whole or in part, because Plaintiff and class members actions diminished the value of any damages.

16. The damages, if any, suffered by Plaintiff and the putative class members in connection with their use of Defendant's website are limited to the amount they paid to access the website.

17. Any monetary damages awarded to Plaintiff and the putative class members must be reduced to the extent that Plaintiff and the putative class members owe any amounts to Defendant.

18. Plaintiff's claims and the claims of the putative class members are barred, in whole or in part, because they are preempted by federal law.

19. Plaintiff's claims and the claims of the putative class members are barred, in whole or in part, because the causes of action did not arise in Minnesota or under Minnesota law.

20. Plaintiff's claims and the claims of the putative class members are barred, in whole or in part, by the First and Fourteenth Amendment of the United States Constitution as Defendant's alleged conduct is protected speech.

21. Aggregating the claims and damages on a class-wide would be excessive and violate Defendant's due process rights.

22. To the extent that Plaintiff's claims and the claims of putative class members rely on regulatory agency guidance, such guidance is not entitled to deference, including but not limited to, because it is inconsistent with the relevant statutes and/or regulations.

23. To the extent that Plaintiff's claims and the claims of putative class members rely on regulatory agency guidance or changes in law, Plaintiff's claims and the claims of the putative class members are barred, in whole or in part, because such guidance and changes in law only apply prospectively.

24. Plaintiff's claims and the claims of the putative class members are barred, in whole or in part, by the doctrines of waiver, release, unclean hands, estoppel, and laches.

**DEFENDANT'S DEMAND FOR TRIAL BY JURY**

Defendant demands a trial by jury of all issues so triable.

### **DEFENDANT'S PRAYER FOR RELIEF**

WHEREFORE, having stated its answer and defenses, Defendant pray for relief as follows:

1. That this action be dismissed with prejudice;
2. That this action proceeds between the named parties only, and that no class action be permitted under Fed. R. Civ. P. 23 and no class be certified under Fed. R. Civ. P. 23(c);
3. For attorneys' fees and costs as permitted by law; and
4. For such other and further relief as this Court deems just and proper.

### **RESERVATION OF RIGHTS**

Defendant reserves the right to assert additional defenses, counterclaims, and/or third-party claims that may appear or become available as discovery and investigation progresses, and hereby reserves the right to amend its Answer to assert any such defenses or claims.

Dated: May 9, 2024

*s/ Nicole M. Moen*

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